Supreme Court, U.S.
FILED
MAR 19 1998
CLERK

No. 97-1364

In The

Supreme Court of the United States

October Term, 1997

ROBERT S. SPRINGSTON,

Petitioner,

v.

CONSOLIDATED RAIL CORPORATION, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Plaintiff/petitioner is Robert S. Springston. There are two defendant/respondents: Consolidated Rail Corporation and General Motors Corporation.

Defendant/respondent, Consolidated Rail Corporation, is a wholly-owned subsidiary of Conrail, Inc., which is not a publicly held corporation. Consolidated Rail Corporation has an ownership interest in the following companies: Albany Port Railroad Company; Belt Railroad Company of Chicago; Indiana Harbor Belt Railroad Company; Lakefront Dock and Railroad Terminal Company; Peoria & Pekin Union Railway Company; and TTX Corporation.

Consolidated Rail Corporation does not have an ownership interest in any other company, except for its wholly-owned subsidiaries.

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STATEMENT OF THE CASE

This petition seeks review of a decision of the Sixth Circuit affirming judgment that was entered on a jury verdict in favor of respondent Consolidated Rail Corporation ("Conrail"). The petition also seeks review of the Sixth Circuit's decision affirming summary judgment for respondent General Motors ("G.M.").

The case arose out of a truck-train accident that occurred just before midnight at a flat and totally unobstructed rural railroad crossing in northwestern Ohio.[1] The single-track crossing had no train-activated warning signals. Springston's eastbound pick-up truck was struck by Conrail's northbound train. Lights and other warning devices on Conrail's locomotive met or exceeded applicable federal regulations.

Petitioner sued Conrail and G.M., the manufacturer of Conrail's locomotive, claiming, among other things, that the locomotive should have been equipped with additional alerting lights. Finding that the Locomotive Boiler Inspection Act, 49 U.S.C. §§ 20701-20903 ("LBIA"), had preempted the field of locomotive equipment regulation, the district court dismissed that claim as to Conrail and granted G.M.'s motion for summary judgment.

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[1] This public crossing is one of 162,426 crossings in the United States, as reported by the Federal Railroad Administration in the 1996 Highway-Rail Crossing Accident/Incident and Inventory Bulletin, No. 19. Springston's statement at p.24 that there are "millions of railroad grade crossings in this country" is inaccurate.

Petitioner proceeded to trial against Conrail only on other negligence claims. A jury verdict was returned in favor of Conrail. On appeal, the jury's verdict and the dismissal of G.M. was affirmed.

The petition challenges the district court's ruling on the allowance of the petitioner's claim that Conrail caused him to collide with Conrail's train, arguing that the district court erred in dismissing the equipment claims against Conrail and G.M.

For the reasons discussed below, there is no cause for this Court's review of the Sixth Circuit decision. Misstatements of fact and law in the petition underscore the obvious lack of meritorious questions for review.

REASONS FOR DENYING THE WRIT

A. The facts of this case do not support reversal.

Springston urges the Court to review the Sixth Circuit decision in the hope that he will gain another trial where he may present his alerting-light claim. The record, however, shows that the outcome of the case would have been the same whether this claim was presented or not.

Springston had no memory of the accident, but the train crew testified that the dome light was on in Springston's cab as it approached the crossing and that he was looking down at the seat beside him. The sheriff's deputy who responded to the collision testified that he found Springston, ejected from his vehicle, lying on top of his road map.

Locomotive alerting lights do provide some additional warning to motorists but that warning is negated for drivers who are reading inside their vehicles. Springston is simply incorrect when he writes in his petition that "This entire tragedy could have been prevented had the locomotive been so equipped." (Brief, p.6.)

In answer to an interrogatory, the jury found that Springston had not observed the signs as he approached the crossing. Skid marks leading to the point of collision indicate that he looked up from his map, became aware of the approaching train, and slammed on his brakes about 50 feet from the crossing. Nothing making Conrail's locomotive more discernible or conspicuous would have prevented this accident. The tragedy could have been prevented only if Springston had observed the railroad-ahead warning signs and then looked and listened for a train.

The question presented in the petition is one that would not affect the outcome. The facts of the case, therefore, do not present an appropriate framework for decision on the issue presented.

B. The law on which the Sixth Circuit based its decision has not been repealed or changed.

The Sixth Circuit held that Springston's alerting-light claim was preempted under the LBIA. Springston argues, in his petition, that the Sixth Circuit erred in holding that his claim was preempted by the LBIA because "The LBIA was repealed on July 5, 1994, more than three years after Springston's collision." (Brief, p.15.) The LBIA was not

repealed. It was recodified at 49 U.S.C. §§ 20701-20903. These sections were omitted from petitioner's appendix.

C. Springston has ignored (or overlooked) the controlling authority from this Court.

Claiming the Circuit Court relied only on the Ninth Circuit's decision in *Marshall v. Burlington Northern, Inc.*, 720 F.2d 1149 (9th Cir. 1983), Springston does not cite *Napier v. A.L.C.R. Co.*, 272 U.S. 605, 47 S.Ct. 207, 71 L.Ed. 432 (1926), the case relied upon in Judge Dowd's district court memorandum opinion (App. C14-15, 21-23) and by Judge Batchelder in the opinion below (App. A6-7). *Napier* is dispositive of the question presented for review. Springston presents no compelling reason to disturb this long-standing precedent.[2]

D. The preemptive effect of the LBIA on state regulation of locomotive equipment was not displaced by the Federal Rail Safety Act.

Springston argues that LBIA cannot properly be applied to preempt his alerting-lights claim because the Act was intended only to address safety concerns for

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[2] Other courts have followed the *Napier* decision in holding that the LBIA preempts state authority to regulate locomotive equipment. See *Missouri P. R. Co. v. Railroad Com. of Texas*, 833 F.2d 570 (5th Cir. 1987), *reh'g, en banc, denied*, 845 F.2d 1022 (5th Cir. 1988); *Mosco v. Baltimore & Ohio Railroad Company*, 817 F.2d 1088 (4th Cir. 1987), *cert. denied*, 484 U.S. 851, 108 S.Ct. 152, 98 L.Ed.2d 108 (1987); *King v. Southern Pacific*, 855 F.2d 1485 (10th Cir. 1988); *Eldridge v. Missouri Pacific Railroad*, 832 F.Supp. 328 (E.D. Okla. 1993).

railroad employees and not for the general public. He then concludes that for non-employee claims, the only basis for preemption of state regulation over locomotive equipment is under the express preemption provision of the Federal Railroad Safety Act ("FRSA"), 45 U.S.C. § 431, recodified at 49 U.S.C. § 20106 (App. E7).

Springston offers no case law to support his argument. The decision of the Sixth Circuit in rejecting his argument is consistent with the ruling in *Marshall v. Burlington Northern, Inc.*, 720 F.2d 1149, 1153 (9th Cir. 1983). In *Marshall*, Judge (now Justice) Kennedy wrote that the FRSA "does not subsume, replace, or recodify any acts. The logical inference from this structure is that Congress intended to leave unchanged the force and effect of existing federal regulatory statutes."

Moreover, Springston is incorrect in arguing that his alerting-light claim would not be preempted under FRSA. When this accident occurred in June of 1991, the Federal Railroad Administration had already covered the subject of Springston's alerting-light claim. As noted in the *Marshall* opinion, the Federal Railroad Administration ("FRA") had studied and considered regulations on locomotive alerting lights in 1983. The FRA concluded "that the information in the docket does not support the proposition that alerting lights are effective in reducing the incidents of grade-crossing accidents. Without that support, a Federal regulatory requirement that railroads equip their locomotives with an alerting light is not justified." 48 Fed.Reg. 20,257 (May 5, 1983). See *Marshall v. Burlington Northern, Inc.*, 720 F.2d 1154. The explicit decision by the FRA to not require alerting-lights on locomotives preempted state authority to issue such regulations.

In *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 178, 98 S.Ct. 988, 1004, 55 L.Ed.2d 179 (1978), this Court held that " '[W]here failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute,' States are not permitted to use their police power to enact such regulation." (quoting *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 774, 67 S.Ct. 1026, 1030, 91 L.Ed. 1234 (1947)). See also *Norfolk & W. R. Co. v. Public Utilities Com.*, 926 F.2d 567 (6th Cir. 1991), *reh'g, en banc, denied*, 1991 U.S. App. Lexis 7104 (6th Cir. Apr. 12, 1991) (holding that the FRA's explicit refusal to adopt a regulation requiring railroad bridge walkways was a determination that such a regulation was not appropriate, and thus amounted to negative preemption of an Ohio regulation requiring such walkways). Although the FRA did later issue regulations requiring alerting lights, its determination in 1983 that alerting-light regulations were not appropriate was still effective as preempting Springston's claim.[3]

At the time of Springston's accident, the FRA had not only studied the issue of alerting lights but had also issued regulations specifying the type and intensity of locomotive lights. In 49 C.F.R. § 229.125 (promulgated in

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[3] Springston is incorrect in stating that the FRA alerting-light regulations were promulgated after the district court and Sixth Circuit rulings in this case. (Brief, p.18.) The FRA issued an Interim Rule on alerting lights on February 3, 1993 (IR-1) (58 Fed.Reg. 6899), which was revised on May 13, 1994 (59 Fed.Reg. 24963). A final rule was issued on March 6, 1996 (61 Fed.Reg. 8887). The regulation was codified at 49 C.F.R. 229.133.

1980), the FRA required that lead locomotives be equipped with headlights that produce "at least 200,000 candela," and that the headlights "be arranged to illuminate a person at least 800 feet ahead and in front of the headlight." That regulation covered the subject of Springston's claim of common-law negligence for failure to equip the locomotive with a different type of headlight, and effected preemption under the FRSA. Thus, even though the decision below was not based on a finding of preemption under the FRSA, Springston's conclusion that a different result would have followed under that analysis is wrong.

E. There is no genuine conflict between the Sixth Circuit decision and the decisions of the Montana Supreme Court.

Springston urges the Court to grant his petition for the purpose of resolving a conflict between the decision of the Sixth Circuit and the law of Montana. He cites two decisions of the Montana Supreme Court: *Runkle v. Burlington Northern R.R. Co.*, 188 Mont. 286, 613 P.2d 982 (Mont. 1980) and *Henry v. District Court of the Seventeenth Judicial District*, 198 Mont. 8, 645 P.2d 1350 (1982). Although those cases did involve alerting-light claims, the decisions did not address the issue of preemption under the LBIA, which was the basis for the Sixth Circuit ruling.

In *Runkle v. Burlington Northern*, 613 P.2d 991, the court held that the issue of a railroad's negligence in "failing to provide . . . oscillating headlights . . . is a question of fact for the jury." The court, however, did not

address whether Congress had occupied the field of locomotive equipment through the LBIA. Likewise, in *Henry v. District Court*, 645 P.2d 1352, the court held that a jury could decide whether the railroad "had a common-law duty to equip its locomotive with various warning devices." Although the court acknowledged the railroad's argument that the alerting-light claim was preempted under the LBIA,[4] the court did not address that argument. Instead, the court considered only whether there was preemption under the FRSA based on a federal regulation covering alerting lights. The court concluded that the FRA had not issued an alerting-light regulation and, on that basis alone, held that the alerting-light claim was not preempted, stating "this Court does not believe that there is a federal preemption question involved in this case. . . . " *Henry v. District Court*, 645 P.2d 1353.

Since the Montana court did not address the issue of preemption under the LBIA, the decisions cited by Springston are not in genuine conflict with the Sixth Circuit ruling. While the holdings of the Montana cases in allowing alerting-light claims does conflict with the Sixth Circuit decision that those claims are preempted under LBIA, those holdings may be viewed simply as unfortunate products of incomplete analysis. Had the Montana court addressed the issue of LBIA preemption and concluded that the claims were not so preempted, a genuine conflict might exist. That is not the case, and Springston's argument that the court should grant his petition to resolve this claimed conflict is unavailing.

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[4] *Henry v. District Court*, 645 P.2d 1351.

F. The decision of the Sixth Circuit serves the interest of national uniformity over locomotive equipment regulation.

The Court should deny Springston's petition because the Sixth Circuit decision supports the objective of national uniformity in railroad regulation. One court addressed the potential dangers from non-uniform locomotive regulation in *Consolidated Rail Corp. v. Pennsylvania Public Utilities Comm'n*, 536 F.Supp. 653 (E.D.Pa. 1982), *aff'd mem.*, 696 F.2d 981 (3d Cir. 1982), *aff'd sum. sub nom., Pennsylvania Public Utilities Comm'n v. Consolidated Rail Corp.*, 461 U.S. 912, 103 S.Ct. 1888, 77 L.Ed.2d 280 (1983). In *Consolidated Rail*, the court wrote that if state authority were to reach the subject of locomotive equipment, the exercise of that authority could generate "a new reservoir of differing, and possibly incompatible, railroad safety law. This would run counter to Congress's purpose of uniform regulation [as stated in 49 U.S.C. § 20106]." The district court noted its concern over this danger in the case *sub judice*, writing that "If each state is permitted to make its own decisions with respect to such items as reflective materials, oscillating, strobe and ditch lights, such goal [the Congressional goal of national uniformity on locomotive-equipment regulation] would be compromised." (App. C23.)

The scope of potential conflicts between regulations of various states regarding locomotive equipment would be significant if the Court were to adopt Springston's proposal and abandon preemption under the LBIA. In fact, the complaint that Springston filed illustrates the point. While his petition addresses only the issue of preemption as it relates to his alerting-light claim, that claim

was only one of many he alleged about the locomotive. He also claimed that the locomotive should have been equipped with reflective material, that it should have been painted a different color, and that the train horn was not loud enough. (App. C7.) Without uniformity on the requirements for locomotive design and equipment, railroads could face widely different demands for locomotives traveling from state to state on a virtually limitless range of features.

G. This case does not present an important federal question for review.

Springston's petition urges the Court to grant certiorari to decide whether his alerting-light claim was properly dismissed on the basis of LBIA preemption. He concedes, however, that the claim would be preempted under the FRSA if brought today, since he acknowledges that the FRA has promulgated regulations covering the subject of locomotive alerting lights. (Brief, pp.17, 18.) Any decision by the Court on the effect of LBIA preemption on alerting-light claims, therefore, would be of interest solely to the parties in this case.

CONCLUSION

For the foregoing reasons, respondent, Consolidated Rail Corporation, respectfully urges the Court to deny the petition.

Respectfully submitted,

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